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1 PROCEEDINGS

2 EXAMINER ALBERS: By the authority vested in
3 me by the Illinois Commerce Commission, I now call
4 Docket 00-0579. This docket concerns Central
5 Illinois Light Company's proposal to eliminate its
6 Fuel Adjustment Clause.

7 May I have the appearances for the
8 record, please.

9 MS. NORRINGTON: Karin Norrington and Robert
10 J. Kelter for the Citizens Utility Board, 208 South
11 La Salle, Suite 1760, Chicago, Illinois 60604.

12 MR. FITZHENRY: Edward Fitzhenry of the law
13 firm of Lueders, Robertson and Konzen, Post Office
14 Box 735, Granite City, Illinois 62040, appearing on
15 behalf of the Illinois Industrial Energy Consumers.

16 MS. VON QUALEN: Janis Von Qualen and John
17 Reichart, on behalf of the Staff of the Illinois
18 Commerce Commission, 527 East Capitol Avenue,
19 Springfield, Illinois 62701.

20 MR. SEIDEL: W. Michael Seidel, for the law
21 firm of Defrees and Fiske, 200 South Michigan
22 Avenue, Suite 1100, Chicago, Illinois 60604,

1 appearing on behalf of Central Illinois Light
2 Company.

3 EXAMINER ALBERS: And are there any others
4 wishing to enter an appearance? Okay. Let the
5 record show no response.

6 Are there any preliminary matters?
7 Okay. Hearing none, I have a few.

8 Yesterday I received CUB's Motion for
9 Sanctions, and the schedule for responses and
10 replies is as follows: Responses are due February
11 14th, and replies are due February 20th, and e-mail
12 service to me is fine.

13 Also, I ask anyone to note if any
14 exhibits you're offering today are not on e-Docket
15 or if you have any revisions to exhibits that are
16 on e-Docket.

17 And, finally, with regard to Staff's
18 Motion for an Interim Order, after reviewing the
19 transcript and considering the responses and
20 replies to that motion, it's my opinion that motion
21 should be denied.

22 And with that said, I assume --

1 Mr. Fitzhenry?

2 MR. FITZHENRY: You've yet to rule on IIEC's
3 Motion to Dismiss?

4 MS. NORRINGTON: Don't you still have a reply
5 to do?

6 MR. FITZHENRY: No, I filed a reply yesterday.

7 EXAMINER ALBERS: Yeah, I received that.

8 MS. NORRINGTON: Oh, I didn't receive that.

9 EXAMINER ALBERS: And I am not ruling on the
10 Motion to Dismiss.

11 MR. FITZHENRY: At this time?

12 EXAMINER ALBERS: That's still under
13 consideration.

14 MR. FITZHENRY: Thank you.

15 EXAMINER ALBERS: And any other preliminary
16 matters? No? Okay.

17 Why don't we hear from CILCO's witnesses
18 first, but why don't I swear in all the witnesses,
19 so if Mr. Christ and Mr. Larson could stand up as
20 well, I'll swear you all in together.

21 (Whereupon the four
22 witnesses were sworn by

1 Examiner Albers.)

2 EXAMINER ALBERS: All right. Thank you.

3 And would CILCO's witnesses please join
4 us up here.

5 MR. SEIDEL: Can we go off the record for
6 purposes of marking the exhibits?

7 EXAMINER ALBERS: Okay. Off the record.

8 (Whereupon at this point in
9 the proceedings an
10 off-the-record discussion
11 transpired, during which
12 time CILCO Supplemental
13 Exhibit 10.1 Revised
14 (Confidential) was marked
15 for identification.)

16 EXAMINER ALBERS: Back on the record.

17 Mr. Seidel, if you'd like to offer your
18 exhibits.

19 MR. SEIDEL: Yes. On behalf of Central
20 Illinois Light Company, pursuant to the direction
21 of the Examiner at the previous status hearing, we
22 would call on behalf of the Company witnesses

1 William G. Livingstone and Glenn L. Davidson as a
2 panel. They've been previously sworn, and, I'll
3 begin my preliminary questions.

4 EXAMINER ALBERS: Go right ahead.

5 WILLIAM G. LIVINGSTON

6 GLENN L. DAVIDSON

7 called as witnesses on behalf of Central Illinois
8 Light Company, having been first duly sworn, were
9 examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. SEIDEL:

12 Q. Gentlemen, would you please state your
13 names and business addresses?

14 A. (Mr. Livingstone) William G.
15 Livingstone, 300 Liberty Street, Peoria, Illinois
16 61602.

17 A. (Mr. Davidson) Glenn L. Davidson, 300
18 Liberty Street, Peoria, Illinois 61602.

19 Q. Mr. Livingstone, I've handed you what
20 has been marked for identification purposes as
21 CILCO's Supplemental Exhibit 10.0 and CILCO
22 Supplemental Exhibit 10.1 Revised. CILCO

1 Supplemental Exhibit 10.0 purports to be a
2 nine-page typewritten document consisting of
3 questions and answers and bears the title Prepared
4 Supplemental Testimony of William G. Livingstone on
5 Behalf of Central Illinois Light Company, Docket
6 No. 00-0579, and CILCO Supplemental Exhibit 10.1
7 Revised appears to be a spreadsheet consisting of
8 numerous pages, the first page of which indicates
9 Forecasted July 2000 - September 2001 FAC, and it's
10 marked as Confidential. Do you have those
11 documents in front of you?

12 A. (Mr. Livingstone) Yes, I do.

13 Q. Are you familiar with the contents of
14 those documents?

15 A. (Mr. Livingstone) Yes, I am.

16 Q. Were these documents prepared by you or
17 at your direction and under your supervision?

18 A. (Mr. Livingstone) Yes, they were.

19 Q. Are there any changes or corrections --
20 any changes, corrections, or additions to 10.0 or
21 10.1?

22 A. (Mr. Livingstone) I have additions to

1 10.1.

2 Q. Would you please state the nature of the
3 addition?

4 A. (Mr. Livingstone) After close of
5 business on February 6th an updated pricing letter
6 was received from Freeman that updated the 2000
7 pricing which changes the fudge factor or quarterly
8 adjustment for that fourth quarter pricing, the
9 adjustment which was made in 10.1.

10 Q. What was the --

11 A. (Mr. Livingstone) The specific changes I
12 noted was that the PCF estimate of 16 was an actual
13 of 9, which changes the adjustment from a positive
14 \$6 to approximately a negative \$1.

15 EXAMINER ALBERS: Where at in 10.1 are you
16 referring?

17 A. (Mr. Livingstone) Where I made the
18 pricing adjustments to the Freeman coal for the
19 third and fourth quarter of 2000.

20 MR. SEIDEL: Let me just interrupt for a
21 second because the 10.1 is confidential, so we need
22 to be careful about what we go into.

1 EXAMINER ALBERS: I just want to know where
2 you're referring to.

3 A. (Mr. Livingstone) Specifically on the
4 spreadsheets that at the bottom are identified
5 Exhibit - Freeman Adjustment Out Other Coal.

6 MS. NORRINGTON: Which page?

7 A. (Mr. Livingstone) Which would be --
8 well, let me get to the -- which would be on the
9 fourth page of that set of spreadsheets,
10 specifically the adjustments that I made to the
11 Cost per Ton row for the quarters.

12 EXAMINER ALBERS: All right. Just so I'm
13 clear, you're looking at the page on the far left,
14 the very top column it has Edwards Plant?

15 A. (Mr. Livingstone) Correct.

16 MS. NORRINGTON: Is this Freeman Adjustment
17 Out Other Coal?

18 A. (Mr. Livingstone) Yes.

19 EXAMINER ALBERS: And you're going down to
20 Duck Creek Plant?

21 A. (Mr. Livingstone) Right.

22 EXAMINER ALBERS: And then --

1 A. (Mr. Livingstone) Cost per Ton.

2 EXAMINER ALBERS: Cost per Ton. Has everybody
3 found that?

4 MS. NORRINGTON: Yes.

5 MR. FITZHENRY: Page 5 of my printout, but.

6 MS. VON QUALEN: Is there going to be a
7 revised Revised 10.1 to show the changes or have we
8 been given copies of the changes he's testifying
9 about?

10 EXAMINER ALBERS: That's what I'm going to get
11 to here in a second.

12 MS. VON QUALEN: Okay.

13 EXAMINER ALBERS: Let me ask you this.

14 A. (Mr. Livingstone) Okay.

15 EXAMINER ALBERS: The Exhibit 10.1 Revised
16 that we just discussed off the record.

17 A. (Mr. Livingstone) Yes.

18 EXAMINER ALBERS: Is that different from what
19 you're talking about now?

20 A. (Mr. Livingstone) Yes.

21 MR. SEIDEL: No, it's not.

22 A. (Mr. Livingstone) I'm sorry. The

1 changes I'm purporting to make will change 10.1.

2 EXAMINER ALBERS: Revised.

3 A. (Mr. Livingstone) Revised.

4 EXAMINER ALBERS: And so now we have an
5 updated Revised 10.1.

6 MR. SEIDEL: No. Can I go off the record to
7 explain this to make it much clearer?

8 EXAMINER ALBERS: Why don't we try to do it on
9 the record now since we've gotten this far on the
10 record.

11 MR. SEIDEL: Okay.

12 MS. NORRINGTON: Shouldn't an explanation come
13 from the witness and not the attorney?

14 EXAMINER ALBERS: Well, I want someone to give
15 me an explanation here, and I'm going to go first
16 to Mr. Livingstone here. It's his exhibit.

17 A. (Mr. Livingstone) Okay. As I stated, we
18 received the updated pricing memo after close of
19 business February 6th, which directly affected the
20 adjustment to be made as directed, which would
21 change the amount of the adjustment that is
22 represented in 10.1.

1 EXAMINER ALBERS: Okay.

2 MR. FITZHENRY: Was that the change that was
3 reflected in Revised Exhibit 7.1?

4 MR. SEIDEL: Well, you're referring to his
5 Revised Exhibit 7.1, but we received after close of
6 business on February 6th an updated invoice from
7 Freeman that replaces the projections they provided
8 in 7.1 with actual figures for the fourth quarter.

9 MR. FITZHENRY: Mr. Griffin refers to it as an
10 update to CILCO Exhibit 7.1. Would that be
11 correct?

12 MR. SEIDEL: That would be correct.

13 MR. FITZHENRY: And that's the update that
14 then will be eventually reflected in 10.1 Revised.

15 MR. SEIDEL: We have not, because the Examiner
16 only directed us to incorporate the plug/fudge
17 figures that appear in 7.1, done anything to 10.1
18 other than present the effect of the fudge /plug
19 factors shown in 7.1. Mr. Livingstone is merely
20 updating the record and indicating that the \$6
21 figure that was incorporated, the fudge/plug factor
22 that appears in 7.1, which the Examiner asked to be

1 incorporated into 10.1, we have learned as of
2 February 6th is -- that the projection contained in
3 that exhibit was incorrect and, in fact, it is not
4 6.0. it's a negative 1, and he is only saying that
5 -- and that is all he's saying.

6 EXAMINER ALBERS: Okay.

7 MR. SEIDEL: We could submit it. You know,
8 given enough time, we could rerun it.

9 EXAMINER ALBERS: Well, before we go anywhere
10 with that, the adjustment that you're referring to
11 would actually appear on what we've labeled 7.1?
12 And that using those numbers on that, you end up
13 getting what you get in 10.1?

14 A. (Mr. Livingstone) I guess the updated
15 letter I guess -- I'm not sure what it would have
16 been identified as. It's a more accurate version
17 of the information that's contained in 7.1. My
18 proposal is that that adjustment that was reflected
19 in 10.1 should be updated to reflect the numbers in
20 this updated cost letter from Freeman.

21 EXAMINER ALBERS: I guess what I'm trying to
22 get at is what number on what exhibit that we have

1 before us is actually changing as a result of the
2 letter you received from Freeman?

3 A. (Mr. Livingstone) Within Exhibit 7.1,
4 the quarterly adjustment factor that appears on
5 that -- within that exhibit is the number I am
6 referring to that has changed.

7 EXAMINER ALBERS: Okay. And that's quarterly
8 adjustment for the fourth quarter of 2000?

9 A. (Mr. Livingstone) Correct, correct.

10 EXAMINER ALBERS: Okay, and you're saying that
11 that change kind of flows through into 10.1.

12 A. (Mr. Livingstone) Correct.

13 EXAMINER ALBERS: Okay. So which particular
14 columns in that cost per ton are affected then?

15 A. (Mr. Livingstone) That would be the cost
16 per ton for the fourth quarter of 2000.

17 EXAMINER ALBERS: So October, November, and
18 December would be different?

19 A. (Mr. Livingstone) Correct.

20 EXAMINER ALBERS: And would that number be
21 proprietary? Would those three numbers be
22 proprietary?

1 MR. SEIDEL: Can we go off the record? I have
2 to ask my client whether they are or not. I don't
3 know.

4 EXAMINER ALBERS: All right. Off the record.
5 (Whereupon at this point in
6 the proceedings an
7 off-the-record discussion
8 transpired.)

9 EXAMINER ALBERS: Back on the record.
10 I believe we have clarified the nature
11 of the three particular numbers for the three
12 months Mr. Livingstone said needed to be changed in
13 light of some additional information from Freeman
14 Coal Company. Does anybody else have any questions
15 about the revisions he noted earlier? Okay.

16 Now, Mr. Seidel, are you going to offer
17 the document from Freeman as an exhibit?

18 MR. SEIDEL: Yes, I am.

19 EXAMINER ALBERS: Okay. Did you want to do
20 that now?

21 MR. SEIDEL: Yes, I did. That's where I would
22 be at in my list of questions.

1 EXAMINER ALBERS: Okay.

2 MR. SEIDEL: Off the record.

3 EXAMINER ALBERS: Let's go off the record.

4 (Whereupon CILCO
5 Supplemental Exhibit 10.2
6 (Confidential) was marked
7 for identification, and the
8 hearing was thereafter in
9 recess.)

10 EXAMINER ALBERS: Back on the record.

11 All right. Before the interruption
12 there, did you, in fact, offer this as 10.2 yet?

13 MR. SEIDEL: No. That's what I'm about to do
14 now.

15 EXAMINER ALBERS: Okay. I'm sorry. Go ahead.

16 MR. SEIDEL: Thank you.

17 Q. Mr. Livingstone, I've handed you what
18 has been marked for identification purposes as
19 CILCO Supplemental Exhibit 10.2 which purports to
20 be a letter from Freeman Energy Corporation, a
21 General Dynamics Company, dated February 6, 2000,
22 to

1 Mr. J. I. Williams at the Duck Creek Plant in
2 Canton, Illinois, which consists of seven pages,
3 and ask you if you are familiar with this document?

4 A. (Mr. Livingstone) Yes, I am.

5 Q. Is this the document upon which you
6 based your proposed addition to your testimony
7 regarding the update of the third quarter
8 projections contained in CILCO Exhibit 7.1?

9 A. (Mr. Livingstone) Yes, it is.

10 Q. And is it your understanding that this
11 document contains the actual figures for the fourth
12 quarter that go into the determination of the
13 fudge/plug factor that the Examiner has directed
14 you to incorporate into the exhibits that you've
15 submitted today?

16 A. (Mr. Livingstone) Yes.

17 Q. If I were to ask you the questions --
18 first let me ask you, was Exhibit 10.1 prepared by
19 you or under your direction and supervision? I
20 think I may have asked you that, but let's clarify
21 that.

22 A. (Mr. Livingstone) Yes.

1 Q. And does the information portrayed in
2 that information truly and accurately portray what
3 it's intended?

4 A. (Mr. Livingstone) Yes.

5 Q. If I were to ask you the questions
6 appearing in CILCO Supplemental Exhibit 10.0, would
7 your answers be -- with the additions you've made
8 today, be the same as appear therein?

9 A. (Mr. Livingstone) Yes.

10 EXAMINER ALBERS: You haven't actually made
11 any changes to 10.0, have you?

12 MR. SEIDEL: Well, no. He made an addition
13 orally today. That's all.

14 EXAMINER ALBERS: But 10.2. Or the three
15 number in 10.1?

16 MR. SEIDEL: In 10.0 I believe, without
17 looking at it directly, he says I made in 10.1 the
18 changes that the Examiner requested with respect to
19 the plug/fudge factor, which is \$6, and he's merely
20 added today that based on this 10.2, that the
21 figure is not 6 any longer.

22 EXAMINER ALBERS: Okay. All I'm getting at is

1 whether or not we need to have revised stuff put on
2 e-Docket.

3 MR. SEIDEL: No. There's no changes that need
4 to be made to the physical document.

5 EXAMINER ALBERS: Okay. That's fine.

6 MR. SEIDEL: At this point I have concluded my
7 preliminary questions for the prepared supplemental
8 testimony of Mr. Livingstone, Exhibit 10.0, 10.1,
9 and 10.2, and prior to going into the panel
10 testimony I would move for the admission of CILCO
11 Exhibit 10.0, 10.1, and 10.2.

12 EXAMINER ALBERS: Now is 10.2 suppose to be
13 kept confidential?

14 MR. SEIDEL: Yes, it is. Let me elaborate on
15 that. I've learned while we were off the record
16 from Mr. Griffin, my partner, that our contract
17 with Freeman United requires that we keep this type
18 of information confidential.

19 EXAMINER ALBERS: Okay. Are there any
20 objections to any of these three exhibits?

21 MR. FITZHENRY: No objection.

22 MS. VON QUALEN: No objection.

1 MS. NORRINGTON: No objection.

2 EXAMINER ALBERS: Hearing none, I just had a
3 couple of questions.

4 I had a chance to review 10.2 while we
5 were in recess a little bit ago. It's your
6 position that only those three numbers pertaining
7 to cost per ton for October, November, and December
8 of 2000 change?

9 A. (Mr. Livingstone) Yes, based on the
10 fourth quarter estimate that was -- the adjustment
11 I made regarding the fourth quarter estimate was
12 changed by the numbers.

13 EXAMINER ALBERS: Okay. Now this 10.2,
14 however, would any information in this change the
15 cost per ton for any other month?

16 A. (Mr. Livingstone) Anywhere in 10.2?

17 EXAMINER ALBERS: Yes.

18 A. (Mr. Livingstone) It's my understanding
19 that it would, as far as the 2001 pricing also
20 which it reflects, another estimate.

21 EXAMINER ALBERS: I'm sorry. I didn't --

22 A. (Mr. Livingstone) The 2001 estimate is

1 contained in here.

2 EXAMINER ALBERS: Okay.

3 A. (Mr. Livingstone) Like the fourth
4 quarter was estimated in 7.1, the first quarter of
5 2001 has been estimated also.

6 EXAMINER ALBERS: Okay. So those three
7 numbers of January, February, and March of 2001
8 would be affected by 10.2.

9 A. (Mr. Livingstone) Correct.

10 EXAMINER ALBERS: Okay.

11 Now wouldn't any change to any month's
12 cost per ton impact the FAC adjustment to base
13 rates?

14 A. (Mr. Livingstone) Yes.

15 EXAMINER ALBERS: Okay. But this document
16 doesn't contain those new FAC adjustments.
17 Correct?

18 A. (Mr. Livingstone) This document relates
19 to the coal pricing.

20 EXAMINER ALBERS: Right.

21 A. (Mr. Livingstone) Okay. Right.

22 EXAMINER ALBERS: I'm just trying to

1 understand and be clear about what actually is in
2 this, what 10.2 does and the scope of its
3 information.

4 A. (Mr. Livingstone) Correct.

5 EXAMINER ALBERS: Okay. All right.

6 Hearing no objection to any of the three
7 exhibits, then CILCO Supplemental Exhibit 10.0 with
8 attached Exhibits 10.1 and 10.2 are admitted, and
9 10.1 and 10.2 shall be marked confidential.

10 (Whereupon CILCO
11 Supplemental Exhibits 10.0,
12 10.1 Confidential, and 10.2
13 Confidential were received
14 into evidence.)

15 MR. SEIDEL: I may just note for the record
16 that the only reason we point out that the three
17 figures changed is because we understood that the
18 purpose of the hearing today was to present the
19 impact of the \$6 figure that appears for the fourth
20 quarter, and I think Mr. Livingstone has indicated
21 that there may be other changes that would result
22 from this document, and the only reason we did not

1 go into those other changes was because it was --
2 in my understanding it was beyond the scope of the
3 Examiner's direction which was focused on the \$6
4 plug factor for the fourth quarter and the \$13 plug
5 factor for the third quarter.

6 EXAMINER ALBERS: Well, I think the transcript
7 speaks for itself from last Monday, so I'll just
8 leave it at that.

9 MR. SEIDEL: I guess what I'm suggesting, if
10 you'd like us to make other adjustments beyond what
11 we were doing in response, you know, we'd be happy
12 to consider that.

13 EXAMINER ALBERS: Not at this time.

14 Okay. And you have Mr. Davidson's --

15 MR. SEIDEL: Yes. Now to move on to the
16 rebuttal testimony.

17 Q. Gentlemen, I've presented you what has
18 been marked for identification purposes as CILCO
19 Exhibit 11.0 which consists of five typewritten
20 pages of questions and answers and bears the title
21 Prepared Supplemental Rebuttal Testimony of William
22 G. Livingstone and Glenn L. Davidson on Behalf of

1 Central Illinois Light Company, Docket No. 00 -0579.

2 Do you have that document in front of you and are
3 you familiar with its contents?

4 A. (Mr. Livingstone) Yes.

5 A. (Mr. Davidson) Yes.

6 Q. Was this document prepared by you or at
7 your direction and under your supervision?

8 A. (Mr. Davidson) Yes.

9 A. (Mr. Livingstone) Yes.

10 Q. Are there any changes, additions, or
11 corrections that you'd like to add to CILCO
12 Supplemental Exhibit 11.0 at this time?

13 A. (Mr. Davidson) Other than the
14 Supplemental Exhibit 10.2 that Bill Livingstone
15 presented, no.

16 EXAMINER ALBERS: Could you please speak up
17 and articulate.

18 A. (Mr. Davidson) I'm sorry. I said other
19 than the addition that Bill Livingstone had of
20 CILCO Supplemental Exhibit 10.2, no, I don't have
21 any other changes.

22 A. (Mr. Livingstone) No.

1 Q. If I were to ask you the questions that
2 appear in CILCO Exhibit 11.0, would your answers be
3 the same as appear therein?

4 A. (Mr. Davidson) Yes.

5 A. (Mr. Livingstone) Yes.

6 MR. SEIDEL: Mr. Examiner, I move for the
7 admission of CILCO Exhibit 11.0 and tender
8 Mr. Davidson and Mr. Livingstone for
9 cross-examination.

10 EXAMINER ALBERS: Any objection to CILCO
11 Supplemental Exhibit 11.0?

12 MR. FITZHENRY: No objection.

13 MS. VON QUALEN: No objection.

14 MS. NORRINGTON: None.

15 EXAMINER ALBERS: Hearing none, then it is
16 admitted.

17 (Whereupon CILCO
18 Supplemental Exhibit 11.0
19 was received into evidence.)

20 EXAMINER ALBERS: And who would like to begin
21 questioning?

22 MR. FITZHENRY: I'll go first.

1 CROSS EXAMINATION

2 BY MR. FITZHENRY:

3 Q. Mr. Livingstone, my questions first
4 relate to your prepared supplemental testimony,
5 Exhibit 10.0, and turning to page 2, you indicate
6 that you adjusted the cost of futures contract to
7 remove the five-year average which was opposed by
8 Staff, CUB, and IIEC. Is that correct?

9 A. (Mr. Livingstone) Correct.

10 Q. Okay. And just so I'm clear, you made
11 no effort to incorporate any of the other
12 adjustments that had been recommended by Staff or
13 CUB or IIEC as presented in what I'll call the
14 direct portion of the case in your testimony?

15 A. (Mr. Livingstone) No, I did not.

16 Q. And can you tell me why you did not?

17 MR. SEIDEL: I'm going to object to the
18 question. It's beyond the scope of the hearing.
19 The Examiner told us what to do, and we did what we
20 did, and if you have a question why we didn't do
21 anything else, that's beyond the scope of what his
22 testimony was.

1 MR. FITZHENRY: So I take it Mr. Livingstone's
2 answer would be he did what he thought the Hearing
3 Examiner directed?

4 A. (Mr. Livingstone) Yes.

5 EXAMINER ALBERS: Mr. Seidel, correct me if
6 I'm wrong, but I don't recall directing CILCO to
7 have prepared testimony removing the five-year
8 averaging methodology.

9 MR. FITZHENRY: That is correct.

10 MR. SEIDEL: That's correct, but the other
11 parties proposed that, and we don't have any
12 objection to removing it, so.

13 EXAMINER ALBERS: I'm going to overrule the
14 objection.

15 MR. FITZHENRY: Well, let me ask this
16 follow-up question, Mr. Livingstone.

17 Q. Has CILCO now conceded to the positions
18 that were taken by Staff and CUB and IIEC in their
19 opposition to the five-year period of time by which
20 prices would be used to set the test year in this
21 proceeding?

22 MR. SEIDEL: Well, I'm going to object to that

1 question. That's a question for the Company to
2 decide in the brief that it files. The brief we
3 filed already says what our position is in that
4 regard, so I don't think it's proper to ask the
5 witness what the Company's position in its brief
6 will be.

7 MR. FITZHENRY: May I respond?

8 EXAMINER ALBERS: Certainly.

9 MR. FITZHENRY: It appears that Mr.
10 Livingstone on his own volition or on the Company's
11 own volition made this adjustment. I don't believe
12 -- I think you're correct that it wasn't something
13 directed by the Hearing Examiner, and I'm inquiring
14 as to why they've decided to do that. It's a very
15 straightforward question. I think it's a proper
16 question based on what his testimony purports to
17 show.

18 EXAMINER ALBERS: The objection is overruled.

19 A. (Mr. Livingstone) Specifically, I guess
20 just to make sure I'm on the same page, the
21 adjustment that I made, you were detailing the
22 adjustment I made on the five-year forecast. As

1 opposed to a five-year descending forward curve, we
2 used the actual curve that was the June
3 approximately 20th I believe date in the CINERGY
4 futures market, and you're asking about the
5 specific adjustment that I made in this one,
6 correct?

7 Q. No, I'm asking why did you do it.

8 A. (Mr. Livingstone) Okay, but that is the
9 one you're talking about, right?

10 Q. I'm asking -- okay. Let's look
11 specifically at your testimony on page 2, lines 24
12 through 26, and then on line 27 you say, "I made it
13 to conform with the position of the other parties."
14 Do you see that testimony?

15 A. (Mr. Livingstone) Yes, I do.

16 Q. And my question is, why did you do that?

17 A. (Mr. Livingstone) I guess in basic
18 discussions about what we were going to do in this.
19 Because I was not present, the Company's position
20 was that we would agree to that as it was
21 presented.

22 Q. Would it be just for informational

1 purposes for the Commission?

2 A. (Mr. Livingstone) With regards to?

3 Q. In regards to the adjustment that you're
4 reflecting here on page 2.

5 A. (Mr. Livingstone) Correct.

6 Q. It does not represent a concession on
7 the part of CILCO that IIEC, CUB, and Staff are
8 correct vis-a-vis this adjustment. Is that right?

9 A. (Mr. Livingstone) Correct.

10 Q. Okay. And you've performed no other
11 adjustments that have been recommended by Staff,
12 CUB, and IIEC in the course of this proceeding.
13 Correct?

14 A. (Mr. Livingstone) Correct.

15 Q. Thank you.

16 Let me ask you to turn to page 5 of your
17 testimony. Again, we're dealing with Exhibit 10.0,
18 and there in your answer on line 95 in response to
19 question 14 you state that CILCO gave notice to
20 Freeman that it will cease taking deliveries from
21 the Crown II mine if Freeman does not cure its
22 breaches. Correct?

1 A. (Mr. Livingstone) You're on line?

2 Q. Lines 95 through 97.

3 A. (Mr. Livingstone) Sorry.

4 MR. SEIDEL: He's got a different paging.

5 MR. FITZHENRY: Okay. Well, it's --

6 MR. SEIDEL: I see where you're at, but it's

7 question and answer 14.

8 MR. FITZHENRY: Yes.

9 A. (Mr. Livingstone) Okay. I'm sorry.

10 I'm sorry. What was the specific

11 question?

12 Q. Okay. As I understand your testimony,

13 and tell me if I'm wrong or not, there in your

14 response to question 14 you state that CILCO gave

15 notice to Freeman that it will cease taking

16 deliveries from the Crown II mine if Freeman does

17 not cure the breaches. Have I fairly characterized

18 your testimony?

19 A. (Mr. Livingstone) Yes.

20 Q. Okay. And my next question is when was

21 the first time CILCO gave notice to Freeman of

22 these alleged breaches?

1 A. (Mr. Livingstone) I'm not 100 percent
2 sure. I believe -- of the date and the context of
3 it. I believe it may have been sometime in October
4 was the first notice of breach.

5 Q. October 2000?

6 A. (Mr. Livingstone) Yes.

7 MR. FITZHENRY: Okay. Mr. Examiner, that
8 letter that outlines the alleged breaches and so
9 forth has been referenced as confidential
10 information, and I don't know if I go further
11 whether or not that's going to be an issue or not,
12 so I'm just, pursuant to your instructions, sort of
13 giving you a heads up.

14 EXAMINER ALBERS: Just so we're clear, you're
15 referring to the letter that was attached to
16 Staff's Motion for Interim Order.

17 MR. FITZHENRY: It was attached to the Staff's
18 motion. It was also provided in response to Staff
19 Data Request I think 1.05.

20 EXAMINER ALBERS: And it's the letter dated in
21 October of 2000?

22 MR. FITZHENRY: Yes, sir.

1 EXAMINER ALBERS: Okay.

2 MR. FITZHENRY: Let me just try to skirt
3 around it, and I guess if Mr. Seidel believes I'm
4 encroaching on something that is confidential and
5 proprietary, I'll --

6 MR. SEIDEL: I may have some objections as to
7 exceeding the scope of the hearing, but I don't
8 know yet for sure.

9 MR. FITZHENRY: All right. Let me try the
10 next question.

11 Q. So your understanding is you believe
12 that in October of 2000, that was the first time
13 that CILCO gave notice to Freeman of its claim that
14 there were alleged breaches under the coal
15 contract?

16 MR. SEIDEL: Well, I object. I don't see how
17 it's related to presenting testimony in this
18 docket, in this phase of the proceeding, as to what
19 the effect of substituting Turris coal is.

20 MR. FITZHENRY: Well, I haven't asked a
21 question about Turris coal, but, as I recall --

22 MR. SEIDEL: That's what his testimony is.

1 MR. FITZHENRY: As I recall, the Hearing
2 Examiner asked the Company to do specific
3 calculations. That was not, however, the sole
4 limitations of this hearing. This hearing comes
5 about as the direct result of the Staff's motion,
6 taking into account the fact that it just became
7 revealed to all the parties in this proceeding that
8 now CILCO was going to terminate its contract with
9 Freeman, and, as I remember from the hearing, that
10 is the subject matter of this hearing. Of course
11 there are the calculations the Hearing Examiner
12 asked for, but we're not limited in asking
13 questions of these witnesses just to those
14 calculations only.

15 MR. SEIDEL: Well, I have the transcript, and
16 I've read it over carefully because, as I said, I
17 was not involved in the hearings at the prior
18 proceeding, was not involved in the status hearing
19 which resulted in the creation of the transcript,
20 and my understanding from reading the transcript
21 which I have here is that the purpose of this
22 testimony is to show the effect of the notice of

1 termination. So it's part of the record that we've
2 given notice to Freeman that we're terminating the
3 contract, and we've purported to show, pursuant to
4 the Examiner's direction, what the effect was, and
5 if you have a question about the effect and, you
6 know, why does the exhibit show the effect that it
7 does, I'd have no objection to those questions, but
8 any questions to when the notice was given or what
9 the notice said I think is beyond the scope of the
10 hearing.

11 MR. FITZHENRY: Mr. Albers, may I further
12 respond?

13 EXAMINER ALBERS: If you want to. I'm
14 prepared to rule now.

15 MR. FITZHENRY: Well, I think it might be
16 helpful in light of maybe anticipated further
17 objections.

18 The case now is more -- well, is about,
19 among other things, whether or not any Freeman coal
20 costs should be included in the base fuel costs in
21 base rates that come out of this proceeding. I
22 know the Company has their legal arguments, and

1 they cited to those legal arguments during the
2 hearing last Monday, but we have different legal
3 positions on that, and really the question here
4 today is are these facts material and relevant to
5 the adjustment that they're going to be expected to
6 propose and the Commission is expected to order,
7 and I think it truly is. There's a very
8 fundamental question as to whether or not any
9 Freeman coal costs should be included in the test
10 year period, and I think the parties, Staff and CUB
11 and IIEC, to the extent they intend to, should be
12 able to ask questions of these witnesses about
13 CILCO's intentions with respect to the Freeman
14 contract. That's the end of my objection response.

15 MS. NORRINGTON: May I add to that?

16 To the extent that CILCO's witnesses
17 have gone beyond the scope of the questions that
18 were originally posed by Your Honor some week and a
19 half ago, then I think those questions of -- the
20 information that is provided in the testimony is
21 fair game in terms of cross-examination here today.

22 EXAMINER ALBERS: Does Staff want to weigh in

1 on this?

2 MS. VON QUALEN: No.

3 EXAMINER ALBERS: Okay. Thank you.

4 The objection is overruled.

5 At this point you might have to repeat
6 the question.

7 MR. FITZHENRY: Well, I think what I was doing
8 at that point in time was recharacterizing what I
9 thought your response was.

10 Q. It is your recollection that CILCO gave
11 notice to Freeman of its intent to terminate the
12 contract in October of 2000 if certain breaches
13 were not cured. Is that your general
14 understanding?

15 A. (Mr. Livingstone) I am not specifically
16 -- I do not remember specific words on the letter.
17 I know that the letter did mention breaches, but
18 I'm not familiar enough with the letter to answer
19 specifically that it notified them.

20 Q. Mr. Davidson, would you know any better?

21 A. (Mr. Davidson) No, I wouldn't.

22 Q. Okay.

1 When was CILCO first aware that Freeman
2 was in breach or allegedly in breach of the
3 contract?

4 MR. SEIDEL: I object as going beyond the
5 scope of the purpose of the hearing today which was
6 to incorporate what the effect of giving the notice
7 is, not when we learned of it or when we should
8 have learned of it.

9 EXAMINER ALBERS: Okay. Is this the same
10 objection as last time?

11 MR. SEIDEL: No. It's that and, in addition,
12 these two witnesses are not qualified -- there has
13 been no foundation laid for showing that either of
14 these witnesses has any knowledge as to what was
15 the -- led up to the decision to issue the notice
16 of breach and intent of termination.

17 MR. FITZHENRY: Well, we won't know that until
18 I ask these questions, and if they don't know the
19 answer, they don't know the answer, and I don't
20 remember the transcript verbatim, but I thought you
21 had asked for somebody for CILCO to be here to
22 answer these kind of questions, Mr. Albers, but

1 beyond that, I think we'll just have to ask the
2 questions, and if they don't know, they don't know.

3 EXAMINER ALBERS: I will overrule the
4 objection.

5 MR. FITZHENRY:

6 Q. Mr. Davidson, do you remember testifying
7 on December 18, 2000, in this proceeding?

8 A. (Mr. Davidson) Yes.

9 Q. Okay. And do you remember this question
10 that was asked of you by the Hearing Examiner that
11 appears at page 100 of the transcript?

12 MR. SEIDEL: I object to questions that should
13 have been asked on December 18th.

14 MR. FITZHENRY: It's a foundation question.

15 EXAMINER ALBERS: Overruled.

16 You said page 100?

17 MR. FITZHENRY: 100, sir.

18 MR. SEIDEL: Let the record reflect that I was
19 not present, and the only reason for my presence
20 today was to accommodate the fact that the Company
21 could not present the counsel that was present on
22 December 18th at that hearing.

1 EXAMINER ALBERS: And you are on the service
2 list for this docket, and you have sent me
3 personally motions to enter filings.

4 MR. SEIDEL: Well, Mr. Reichart is on the
5 service list too, and he's not here.

6 EXAMINER ALBERS: Well, but they're not
7 complaining about Mr. Reichart not being here.

8 MR. FITZHENRY: May I proceed?

9 EXAMINER ALBERS: Please.

10 MR. FITZHENRY:

11 Q. Mr. Davidson, do you remember this
12 question being asked of you by the Hearing
13 Examiner? Again, it appears at page --

14 MR. SEIDEL: Could he have a copy of the --

15 MR. FITZHENRY: Transcript page 100, lines 17
16 through 19. I'll ask the question first. If the
17 witness needs to see the question, I'll be happy to
18 show him.

19 Q. You were asked a question by Mr. Albers:
20 "Can you speak as to the likelihood of CILCO
21 arbitrating the current Freeman coal price?"

22 A. (Mr. Davidson) I vaguely remember

1 something about that question being asked.

2 Q. Okay, and when you gave your answer on
3 December 18, 2000, were you aware that the Company
4 had given notice of its intention to terminate the
5 Freeman coal contract in October of 2000?

6 A. (Mr. Davidson) No, I didn't.

7 Q. With respect to the prior Freeman
8 arbitration, were you involved in any way?

9 A. (Mr. Davidson) No, I wasn't.

10 Q. Do you know as of December 18, 2000,
11 whether or not -- well, strike that question.

12 Let me ask you today here, as of
13 whatever the date is, January 8, [sic] 2001, can
14 you speak as to the likelihood of CILCO arbitrating
15 the current Freeman coal price?

16 A. (Mr. Davidson) Other than what everyone
17 else sees in the paper, that's all I'm privy to.

18 Q. You have no independent knowledge as to
19 whether or not CILCO is going to arbitrate the
20 Freeman coal contract?

21 A. (Mr. Davidson) No. I have no say in the
22 matter.

1 Q. I understand that you don't have any say
2 in the matter. The question is do you know whether
3 or not that is CILCO's intention?

4 A. (Mr. Davidson) No, I don't.

5 Q. Mr. Livingstone, the same question to
6 you.

7 A. (Mr. Livingstone) Other than what has
8 been in the paper, no.

9 Q. Is there anybody here in the room that
10 would have knowledge as to whether or not CILCO
11 intends to arbitrate the current Freeman coal
12 contract?

13 MR. SEIDEL: Objection. It's beyond the scope
14 of the hearing, and it may also seek confidential
15 information between attorney-client as to who knows
16 what about the case that's pending.

17 MR. FITZHENRY: I'm not sure how to respond.

18 EXAMINER ALBERS: Do you want to respond to
19 that?

20 MR. FITZHENRY: I don't know that the fact
21 that somebody knows whether or not they're going to
22 arbitrate a case or not is something that would

1 fall within the attorney-client privilege. Either
2 they're going to or they're not going to, and I
3 think that's a fair question.

4 MR. KELTER: Can I add something here?

5 The attorney-client interest in this
6 litigation would only apply to this litigation. In
7 other words, if somebody knows that they're going
8 to be arbitrating something in another proceeding,
9 that doesn't invoke the attorney-client privilege
10 in this proceeding.

11 EXAMINER ALBERS: Before we get to that,
12 first, I don't think it's attorney-client privilege
13 to know whether or not someone has knowledge of
14 something. It's not asking him what his knowledge
15 is, so.

16 MR. SEIDEL: I think he's asking who has
17 authority to negotiate or make decisions regarding
18 any arbitrations we might file, may have filed on
19 behalf of the Company against Freeman.

20 EXAMINER ALBERS: I think he's asking -- you
21 can correct me if I'm wrong, Mr. Fitzhenry, but I
22 believe you asked does anyone in this room have

1 knowledge of whether or not CILCO may arbitrate the
2 Freeman coal contract.

3 MR. FITZHENRY: That was precisely my
4 question.

5 EXAMINER ALBERS: Okay. I don't think a
6 response to that question would violate any
7 attorney-client privilege, so I'm going to
8 overrule that objection. You may make additional
9 ones based on attorney-client privilege depending
10 on where this goes, but for that limited question
11 the objection is overruled.

12 Gentlemen.

13 A. (Mr. Livingstone) The level of
14 involvement of the people in the room with the
15 Freeman case is unknown to me.

16 Q. Okay.

17 A. (Mr. Livingstone) As far as specifics.

18 Q. Mr. Livingstone, in your -- you did
19 eventually answer the Hearing Examiner, and at
20 transcript page 101, line 13, you state, "It would
21 be at the level above me", and I guess my follow-up
22 question is, who would be -- what individuals, what

1 are their names, that would be at the level above
2 you that would have been able to answer this
3 question that was posed to you back on December
4 18th when you gave that answer?

5 A. (Mr. Livingstone) Specifically, I don't
6 recall what the question was. It was regarding the
7 Freeman --

8 Q. The question again was, from the Hearing
9 Examiner, can you speak as to the likelihood of
10 CILCO arbitrating the current Freeman coal price,
11 and the answer eventually you gave after a number
12 of objections is "It would be at a level above me."

13 A. (Mr. Livingstone) Was that at my
14 testimony or Mr. Davidson's?

15 Q. Yours.

16 A. (Mr. Livingstone) It was in mine?

17 Q. Well, --

18 EXAMINER ALBERS: Hang on there. I want to
19 make sure that was your testimony.

20 A. (Mr. Livingstone) You started off with
21 Mr. Davidson's testimony.

22 MR. SEIDEL: I think it is Mr. Davidson's.

1 MR. FITZHENRY: Was it Mr. Davidson that was
2 being asked that question? I apologize. Correct,
3 it was Mr. Davidson. Sorry.

4 Q. Did you follow all that, Mr. Davidson?

5 A. (Mr. Davidson) Okay. If you could
6 repeat that.

7 Q. I'd be happy to. You do remember the
8 question that was asked of you by the Hearing
9 Examiner.

10 A. (Mr. Davidson) Right.

11 Q. Eventually you gave the answer: "It
12 would be at the level above me."

13 A. (Mr. Davidson) Right.

14 Q. When you gave that answer, who were you
15 thinking about in terms of being at the level above
16 you?

17 A. (Mr. Davidson) Mainly the Company
18 officials, the vice presidents /presidents of the
19 Company.

20 Q. Are any of those individuals in the
21 hearing room today?

22 A. (Mr. Davidson) No.

1 Q. Mr. Davidson, in your testimony you
2 referenced the newspaper articles that have been
3 published, and I have some questions to ask of you
4 with regard to the two articles that were attached
5 to the Staff motion. Okay? And there's a specific
6 reference to a CILCO spokesperson named Linda
7 Nelson. By the way, do you know who she is?

8 A. (Mr. Davidson) Yes, I do.

9 Q. And in the article that appears in the
10 Illinois State Journal-Register on January 24,
11 2001, she states --

12 MR. SEIDEL: Objection to the hearsay.

13 MR. FITZHENRY: Well, the witness has already
14 offered testimony based on these articles.

15 MR. SEIDEL: Where are you referring to?

16 EXAMINER ALBERS: Why don't we let him ask the
17 question and then --

18 MR. FITZHENRY: Oh, it's Livingstone. I'm
19 sorry. That's what I'm referring to. That's
20 right. This panel thing has got me all goofed up.
21 I do intend to ask these questions of
22 Mr. Livingstone, so move over.

1 (Laughter)

2 Again, at page 5 of Mr. Livingstone's
3 testimony, he comments on the articles as to what
4 Freeman had to say, and there are statements in
5 those articles that are attributable to a CILCO
6 spokesperson, and my questions aren't intended to
7 elicit hearsay, but they're intended to ask him
8 whether or not he agrees or disagrees with those
9 statements, which is perfect cross-examination.

10 MR. SEIDEL: I don't think he has said here
11 and you haven't asked a foundation question that
12 indicates that he's relying on the same article
13 that you're prepared to start asking him questions
14 about something else other than what he stated.

15 MR. FITZHENRY: All right. I'll do that.

16 Q. Mr. Livingstone, on my line 97 at page 5
17 you refer to a January 24, 2001 article. Would
18 that be the same January 24, 2001 article that was
19 attached to the Staff's motion?

20 A. (Mr. Livingstone) I'm not sure. I
21 believe the Staff referred to articles in the
22 Springfield newspapers, and my reference was I

1 think from the Peoria Star was where I actually
2 read that article.

3 Q. Do you have a copy of that with you
4 today?

5 A. (Mr. Livingstone) I do not.

6 Q. Let me ask it this way. Do you believe
7 that CILCO has a duty to purchase coal as a
8 reasonable price?

9 A. (Mr. Livingstone) Yes, I do.

10 MR. FITZHENRY: I would have to think that the
11 next several questions might be -- they get into
12 the notices that were part of the Staff motion and
13 that were also provided for in the response to the
14 Staff data request.

15 EXAMINER ALBERS: Okay. At this point then --
16 actually, do you have other questions that will not
17 be?

18 MR. FITZHENRY: I think most of them are going
19 to be in that area of being maybe confidential.

20 EXAMINER ALBERS: Okay.

21 MR. FITZHENRY: And I tried to ask the ones I
22 knew, I didn't think were going to be confidential

1 at the outset.

2 EXAMINER ALBERS: Okay. At this point then
3 why don't we go in camera.

4 I was just going to ask, if anybody has
5 not signed a proprietary agreement with CILCO, if
6 you could please clear the room, and if it turns
7 out that the information that Mr. Fitzhenry is
8 soliciting from CILCO is not proprietary, this will
9 then become part of the public transcript.

10 We're off the record then.

11 (Whereupon at this point in
12 the proceedings an
13 off-the-record discussion
14 transpired.)

15 (Whereupon the following
16 pages 424 through
17 461 are contained under
18 separate cover for the in
19 camera portion of the
20 proceedings.)

21

22